IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

MFA.No. 299 of 2001(B)

O.P(M.V).NO.1590/1994 OF ADDL. MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM DTD. 19/05/2000.
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APPELLANT/PETITIONER:

YAGAPPAN GEORGE,
G.V. NIVAS,
MARUTHOORKONAM,
KOTTUKAL DESOM,
NEYYATTINKARA TALUK,
TRIVANDRUM DISTRICT.

BY ADV. SRI.R.RAGHAVAN.

RESPONDENTS:
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1. **SAJU PAUL, S/O. POULOSE,**
   MELAIPPALLY VEEDU,
   VELIYANADU.P.O.,
   ERNAKULAM.

2. **BABU, S/O. MANAS,**
   PALLAMKUNNIL PUTHEN VEEDU,
   ANADU MURI, THANNOOR VILLAGE,
   NEDUMANGAD, TRIVANDRUM DISTRICT.

3. **THE NATIONAL INSURANCE CO. LTD.,**
   REPRESENTED BY ITS MANAGER,
   27 KVJ, MARKET JUNCTION,
   THRIPPUNITHURA.

BY ADV. SRI.M.A.GEORGE.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.299 OF 2001

Dated 22nd August, 2007

JUDGMENT

Koshy,J.

Appellant/claimant, a contractor, met with an accident and sustained serious injuries on 4.5.1994. Against a claim of compensation of Rs.8,50,000/=, the Tribunal awarded only Rs.1,61,000/=. The quantum of compensation alone is disputed in this appeal as occurrence of the accident, negligence of the driver of the vehicle insured by the third respondent insurance company and coverage of insurance etc. were found in favour of the claimant.

2. The Tribunal has awarded Rs.50,000/= for disability and loss of earning power. As far as the injuries are concerned, Ext.A7 medical certificate shows that his index middle and little fingers were amputated at inter phalangeal joint level. PW4 doctor was examined to prove the medical certificates and as per Ext.A7 disability certificate, his disability was 32%. It is stated that it is not the whole body disability, but, disability was assessed taking functional disability of the claimant as a result of the loss of fingers and disfiguration of the right hand. The Tribunal after seeing the amputated fingers of the claimant observed as

follows:

> "On a look at the hand of the petitioner it is seen that his right hand is completely disabled due to the amputation of his fingers and the ankylosis."

Apart from the amputation of the two fingers, his wrist was also injured resulting in disabilities in the ankle. We are of the opinion that Tribunal should have calculated compensation taking disability of at least 20%. He was a registered contractor. He produced Ext.A14 and other documents to show that he was a Government contractor. According to the appellant, his monthly income was more than Rs.7,000/= and because of the accident, he cannot continue his contract work that on the date of accident, he was doing a work under an agreement dated 31.5.95 with the Supt. Engineer, Minor irrigation for Rs.8,50,000/- that he could not complete the work and he sustained a loss of Rs.1 lakh that he has lost his earning capacity and that he was the sole earning member of his family. Only Rs.2,400/= was assessed as the monthly income by the Tribunal. Taking 15 as the multiplier considering his age as 40, compensation payable for 20% permanent disability will be Rs.86,400/= (Rs.2,400 x 12 x $\frac{20}{100}$ x 15).

Tribunal has awarded Rs.50,000/= for disability and loss of earning power. Hence, the appellant is entitled to an additional amount of Rs.36,400/= under that head. Even though it was argued that monthly income taken was very low and compensation awarded under other heads were meagre, we are not enhancing the compensation awarded under other heads. Therefore, the appellant is entitled to an additional amount of Rs.36,400/=. The above amount of Rs.36,400/= should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit, over and above the decreed amount by the Tribunal.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

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